

Fundamentals Level – Skills Module

Corporate and Business Law (China)

Monday 9 December 2013



Time allowed

Reading and planning: 15 minutes

Writing: 3 hours

ALL TEN questions are compulsory and MUST be attempted.

Do NOT open this paper until instructed by the supervisor.

During reading and planning time only the question paper may be annotated. You must NOT write in your answer booklet until instructed by the supervisor.

This question paper must not be removed from the examination hall.

The Association of Chartered Certified Accountants

Paper F4 (CHN)

ACCA

ALL TEN questions are compulsory and MUST be attempted

1 In relation to the essential legal system of China:

- (a) explain the term jurisdiction; (2 marks)
- (b) state the general jurisdiction for a contractual dispute; (3 marks)
- (c) state the rules to be complied with when the parties agree to choose the jurisdiction for a contractual dispute; (2 marks)
- (d) state the various courts, other than those under the general jurisdiction for a contractual dispute, which can be chosen by the parties to hear their contractual dispute. (3 marks)

(10 marks)

2 In relation to the Property Law of China:

- (a) explain the meaning of the right to the use of construction land and its legal nature; (4 marks)
- (b) state the right to the use of construction land, for commercial purposes, which shall be created by the form of assignment; (4 marks)
- (c) describe the necessary procedure to be taken to create the right to the use of construction land. (2 marks)

(10 marks)

3 In relation to the Labour Contract Law of China:

- (a) state which entity shall represent the employees to conclude a collective labour contract; (3 marks)
- (b) state the compulsory terms with respect to wages and standards of working conditions in a collective labour contract; (3 marks)
- (c) state the condition, and date, for a collective labour contract to become effective. (4 marks)

(10 marks)

4 In relation to the Contract Law of China:

- (a) state the rule which applies where a third party fails to perform the obligation as agreed by the creditor and debtor; (3 marks)
- (b) explain the meaning of *force majeure*; (3 marks)
- (c) state whether a debtor can claim *force majeure* if breach of contract is caused by a third party failure. (4 marks)

(10 marks)

5 In relation to the Company Law of China:

- (a) describe TWO kinds of illegal activities committed by a director or a senior executive, relevant to the use of the funds of a company, which will damage the rights and interests of the company; (4 marks)
- (b) explain the conditions to be met for a shareholder of a stock company who intends, in their own name, to protect the interests of the stock company due to a director or a senior executive damaging the interests of the company. (6 marks)

(10 marks)

6 In relation to the Enterprise Bankruptcy Law of China, explain what shall be repaid before the insolvent assets can be liquidated at the end of the bankruptcy procedure and the order of distribution of insolvent assets.

(10 marks)

7 In relation to the Securities Law of China:

- (a) explain the term inside information; (3 marks)
- (b) describe the information which shall constitute inside information, in terms of the capital and assets of a stock company. (7 marks)

(10 marks)

8 At the beginning of January Mr Lee and Ms Chan entered into a real estate contract under which Mr Lee would sell an apartment at a price of RMB 800,000 yuan to Ms Chan. The contract also contained the following terms and conditions:

- (i) Ms Chan would make an initial payment of RMB 100,000 yuan in five days upon the conclusion of the contract;
- (ii) on or before 31 January Ms Chan would pay RMB 500,000 yuan, and then both parties would go to the real estate registration centre to make a registration of transfer of property;
- (iii) 15 days after the registration, Ms Chan would pay the remaining balance;
- (iv) the Property Certificate of the apartment should be kept by a real estate broker before the registration.

The day after the conclusion of the said contract, Ms Chan paid the initial payment and Mr Lee put the Property Certificate of the apartment with the real estate broker as prescribed. On 20 January, however, Ms Chan found out that Mr Lee had taken back the Property Certificate from the real estate broker. Ms Chan made several calls and sent a fax to urge Mr Lee to go with her for the registration of the transfer but did not receive any response from him.

On 25 January Ms Chan despatched a letter of the dissolution of the contract to Mr Lee for the return of the initial payment of RMB 100,000 yuan. Mr Lee acknowledged receipt of the notice on 28 January.

Required:

Answer the following questions in accordance with the Contract Law, and give your reasons for your answer:

- (a) state whether Ms Chan was entitled to dissolve the contract; (5 marks)
- (b) state the date on which the contract was dissolved between Ms Chan and Mr Lee; (2 marks)
- (c) state whether there is any legal procedure for Mr Lee where he objected to the dissolution of the contract by Ms Chan. (3 marks)

(10 marks)

- 9 City College, Yolo Co and Mr Wang entered into an investment contract to set up a limited liability company, with a registered capital of RMB 4.5 million yuan, in the bio-tech business. With respect to the capital contributions of each sponsor, they agreed that City College would provide its technology at a value of RMB 1.5 million yuan; Yolo Co would provide its workshop as its capital contribution at a value of RMB 1 million yuan after the conclusion of the contract and Mr Wang would provide RMB 2 million yuan in cash within three months upon its incorporation.

After the incorporation of the company, Yolo Co provided its workshop to the company according to the investment contract. Mr Wang paid only RMB 1.5 million yuan before the deadline of his capital contribution as prescribed in the investment contract, due to a shortage of cash.

Required:

Answer the following questions in accordance with the Company Law, and give your reasons for your answers:

- (a) **state whether the limited liability company could be legally established;** (4 marks)
- (b) **describe the procedure which should be taken with respect to the capital contributions to the company in the form of technology;** (3 marks)
- (c) **explain the liability of Mr Wang for failing to discharge his obligation to make a full capital contribution.** (3 marks)

(10 marks)

- 10 General Contractor entered into a supply contract with Material Co to buy various construction materials at a total price of RMB 20 million yuan. Under the contract, Material Co would provide the first shipment of construction materials, worth RMB 6 million yuan, within 10 days after the conclusion of the contract and General Contractor would make the first payment in 90 days after receipt of the materials. To secure the payment by General Contractor, Huadong Holdings Co issued a letter of guarantee to provide a guarantee of RMB 6 million yuan in favour of Materials Co. Five days after the conclusion of the contract, Material Co delivered the first shipment to General Contractor.

Due to a dramatic increase of various costs, General Contractor was unable to settle the debts owed to its suppliers or sub-constructors and was declared bankrupt by its creditors. The court confirmed the application of bankruptcy and designated a bankruptcy administrator. Materials Co did not know about the bankruptcy of General Contractor and did not declare its credit because it was located in another province.

Having known the information about General Contractor's bankruptcy, Huadong Holdings Co came to declare its credit as a guarantor for the preliminary payment. The bankruptcy administrator held that Huadong Holdings Co was not a qualified creditor as it had not borne its guarantor's obligation and refused to accept the declaration of credit by Huadong Holdings Co.

Required:

Answer the following questions in accordance with the Enterprise Bankruptcy Law, and give your reasons for your answers:

- (a) **discuss whether Huadong Holdings Co should be a qualified creditor of the debtor given that it had not borne its guarantor's obligation;** (5 marks)
- (b) **discuss whether Huadong Holdings Co was entitled to declare its credit if Materials Co came to declare its credit of RMB 6 million yuan against General Contractor.** (5 marks)

(10 marks)

End of Question Paper